

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CURWOOD L. PRICE,

Plaintiff,

Case No. 05-71403
HON. BERNARD A. FRIEDMAN

vs.

PATRICIA CARUSO,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Magistrate Judge Steven D. Pepe's Report and Recommendation ("R and R") dated July 16, 2009. Plaintiff filed a timely objection thereto.

As the R and R notes, Defendant, in her motion for summary judgment, argued that she is entitled to immunity from damages suits under the Religious Land Use and Institutionalized Persons Act ("RLUIPA") when sued in her official capacity. Defendant based her argument on an April 24, 2009 decision of the Sixth Circuit deciding a previously unresolved issue in this Circuit. Cardinal v. Metrish, 564 F.3d 794 (6th Cir. 2009).

In *Cardinal*, the Sixth Circuit addressed the split in the Circuits, and the absence of a Supreme Court ruling regarding this question. After analyzing the arguments of both sides, the Court held:

We find the reasoning of the Fourth and Fifth Circuits consistent with the current Supreme Court case law requiring waivers of sovereign immunity to be "unequivocally expressed." See, e.g., Gomez-Perez, 128 S.Ct. at 1942-43; Lane, 518 U.S. at 192, 116 S.Ct. 2092; United States v. Nordic Village, Inc., 503 U.S. 30, 33-34, 37, 112 S.Ct. 1011, 117 L.Ed.2d 181 (1992). We hold that, because RLUIPA's "appropriate relief" language does not clearly and unequivocally

indicate that the waiver extends to monetary damages, the Eleventh Amendment bars plaintiff's claim for monetary relief under RLUIPA.

Cardinal, 564 F.3d at 801.

Plaintiff argues that in the interest of justice, the *Cardinal* Court's holding should not be followed, and Defendant's motion for summary judgment should be denied. Plaintiff presents a thoughtful and interesting argument as to why the issues presented in his case deserve further consideration and should not be dismissed. However, it is not the province of the District Court to review and reverse the Court of Appeals. Rather, the District Court is obligated to apply precedent dictated by the higher courts. "The district courts in this circuit are, of course, bound by pertinent decisions of this Court [of Appeals] even if they find what they consider more persuasive authority in other circuits." Timmreck v. U.S., 577 F.2d 372, n. 6 (6th Cir.1978) overruled on other grounds by U.S. v. Timmreck, 441 U.S. 780 (1979). With such instruction from the Supreme Court, this Court is not at liberty to disregard the decisions of the Sixth Circuit.

Accordingly,

IT IS ORDERED that Magistrate Judge Steven D. Pepe's Report and Recommendation dated July 16, 2009, is hereby accepted and adopted.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment is GRANTED.

Dated: September 2, 2009
Detroit, Michigan

S/Bernard A. Friedman _____
BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE